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266 NLRB No. 110

D--9811
Inkster, MI

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

RICH-WALL CUSTOM CABINETRY CO., INC.

and

Case 7--CA--21050

MILLMEN'S LOCAL 1452, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL--CIO

DECISION AND ORDER

Upon a charge filed on August 13, 1982, by Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, herein called the Union, and duly served on Rich-Wall Custom Cabinetry Co., Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint on September 17, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that at all times since at least 1957 and

continuing to date, the Union has been the exclusive collective-bargaining representative of Respondent's employees in the appropriate unit; and that, commencing on or about November 16, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union by unilaterally and without notice to the Union failing to make full and timely fringe benefit trust fund contributions pursuant to the collective-bargaining agreement and failing to pay liquidated damages for delinquent contributions as required by the collective-bargaining agreement. Respondent failed to file a proper answer to the complaint.

On December 2, 1982, counsel for the General Counsel filed directly with the Board Motions to Transfer the Case to the Board and for Default Judgment with exhibits attached. Subsequently, on December 10, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motions to Transfer the case to the Board and for Default Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause, and therefore the allegations of the Motion for Default Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing issued on September 17, 1982, and were duly served on Respondent. The complaint specifically stated that unless an answer to the complaint is filed by Respondent within 10 days of service thereof, all the allegations in the complaint ''shall be deemed to be admitted to be true and may be so found by the Board.''

According to the uncontroverted documents submitted with the Motion for Default Judgment, the Regional attorney wrote to Respondent on October 27, 1982, stating that an answer to the complaint had not yet been received, although it was due by September 27, 1982. He further advised Respondent that unless it filed an appropriate answer pursuant to the Board's Rules and Regulations, Sections 102.20 and 102.21, by November 8, 1982, a Motion for Default Judgment would be filed with the Board. Respondent's sole response to the Regional Office's request for an answer is a letter dated November 8, 1982, wherein Respondent states that it completed an audit of the Millmen Benefit reports,

that Respondent agreed with the figures stated in the complaint, and that Respondent would pay the delinquent benefits when business conditions improved. This letter does not conform with the requirements of Section 102.20 quoted above. The letter does not specifically admit or deny any allegations of the complaint. Indeed, it fails to make even a general response to the allegations of the complaint, and instead merely asserts that it is in agreement with the figures in the complaint when the complaint contains no figures regarding the benefit trust fund contributions. Accordingly, we find that Respondent's letter of November 8, 1982, does not constitute an answer.[1] As noted, Respondent has not filed a response to the Notice To Show Cause.

It is clear that, when an answer to an unfair labor practice complaint is not filed in compliance with the Board's Rules, judgment may be rendered on the basis of the complaint alone. Therefore, no good cause to the contrary having been shown and in accordance with the Rules set forth above, the allegations of the complaint are deemed to be admitted and are found to be true. Accordingly, we grant the Motion for Default Judgment.

On the basis of the entire record, the Board makes the following:

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[1] W. L. Moore d/b/a W. L. Moore & Sons, 257 NLRB 967 (1981); Travelodge San Francisco Civic Center, 242 NLRB 287 (1979).

Findings of Fact

I. The Business of Respondent

Respondent is engaged in the manufacture, sale, and distribution of kitchen and bath cabinets and counter tops, and related products. Respondent maintains its principal office and place of business at 27005 Michigan Avenue, Inkster, Michigan, and maintains a cabinet shop at 2638 Princess Avenue, Inkster, Michigan. These two places of business are the only facilities involved in this proceeding. During the year ending December 31, 1981, a representative period, Respondent, in the course and conduct of its operations, purchased and received at its Inkster places of business, wood, hardware, and other goods and materials valued in excess of $50,000 which were received from other enterprises including, inter alia, All American Plywood, Marble Light Corporation and Customers Distributors, Inc., located in the State of Michigan, each of which other enterprises had received the said goods and materials directly from points outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All lay-out men, machine set-up employees, machine operators, spray painters, cross-cut employees, rip sawyers, common employees, frame table employees, assemblers, laborers, sanders, and puttiers employed at Respondent's facility at 2638 Princess Avenue, Inkster, Michigan; excluding guards and supervisors as defined in the Act.

The Union has been and continues to be the collective-bargaining representative of these employees, within the meaning of Section 9(a) of the Act, since at least 1957 by virtue of successive collective-bargaining agreements between Respondent and the Union. The collective-bargaining agreement currently in effect between these parties provides, inter alia, for the remittance by Respondent of payments into certain fringe benefits trust funds including Detroit Millmen's Health and Welfare Fund and Carpenters Pension Trust Fund, Detroit and Vicinity, established for the benefit of employees of signatory employers to said agreement. The agreement further provides for liquidated damages when contributions to the fringe benefit funds are delinquent.

On or about November 16, 1981, and continuing to date, Respondent, by its agent Richard Smith,[2] has unilaterally and without notice to the Union failed to make full and timely fringe

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[2] Richard Smith, Respondent's president, has been and is now a supervisor of Respondent, within the meaning of Sec. 2(11) of the Act, and its agent.

benefit contributions pursuant to the collective-bargaining agreement and failed to pay liquidated damages for delinquent contributions as required by the collective-bargaining agreement.

Accordingly, we find that by the aforesaid conduct Respondent did interfere with, restrain, and coerce its employees in the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. In addition, we find that Respondent has, since on or about November 16, 1981, refused to bargain collectively and is refusing to bargain collectively with the representative of its employees, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effect the policies of the Act.

We have found that Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally, and without notice to the Union, failing and refusing to make contributions to the fringe benefit fund as required by the collective-bargaining agreement entered into between the parties; and by unilaterally, and without notice to the Union, failing and refusing to pay liquidated damages for such delinquent contributions as required by the aforesaid collective-bargaining agreement. In order to dissipate the effect of these unfair labor practices, we shall order Respondent to make whole its employees by paying to the fringe benefit funds the contributions and liquidated damages which should have been made pursuant to the above-described collective-bargaining agreement, retroactive to November 16, 1981.[3]

Conclusions of Law

1. Respondent Rich-Wall Custom Cabinetry Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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[3] Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether Respondent, Rich-Wall Custom Cabinetry Co., Inc., must pay any additional amounts into the benefit funds in order to satisfy our ''make-whole'' remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to the provisions in the documents governing the funds at issue, and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. Merryweather Optical Company, 240 NLRB 1213 (1979), McKissack Painting Co., Inc., 244 NLRB 543 (1979).

2. Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for collective-bargaining within the meaning of Section 9(b) of the Act:

> All lay-out men, machine set-up employees, machine operators, spray painters, cross-cut employees, rip sawyers, common employees, frame table employees, assemblers, laborers, sanders, and puttiers employed at Respondent's facility at 2638 Princess Avenue, Inkster, Michigan; excluding guards and supervisors as defined in the Act.

4. Since at least 1957, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective-bargaining within the meaning of Section 9(a) of the Act.

5. By unilaterally, and without notice to the Union, failing and refusing since on or about November 16, 1981, and at all times thereafter to make contributions to certain fringe benefit funds and to pay liquidated damages resulting from such delinquencies, pursuant to the collective-bargaining agreement between the parties, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and thereby

has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Rich-Wall Custom Cabinetry, Co., Inc., Inkster, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, by unilaterally and without notice to the aforesaid Union failing and refusing to make contributions to certain fringe benefit funds since November 16, 1981, pursuant to the collective-bargaining agreement between the parties.

(b) Refusing to bargain collectively with the Union by unilaterally and without notice to the Union failing and refusing to pay liquidated damages which are due pursuant to the collective-bargaining agreement when contributions to the fringe benefit funds are delinquent.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement with Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL--CIO. The appropriate unit for the purpose of collective-bargaining is:

> All lay-out men, machine set-up employees, machine operators, spray painters, cross-cut employees, rip sawyers, common employees, frame table employees, assemblers, laborers, sanders, and puttiers employed at Respondent's facility at 2638 Princess Avenue, Inkster, Michigan; excluding guards and supervisors as defined in the Act.

(b) Make whole its employees by making contributions to certain fringe benefit funds pursuant to the collective-bargaining agreement between the parties in the manner set forth in the section of this Decision entitled ''The Remedy.''

(c) Make whole its employees by paying certain fringe benefit funds liquidated damages which are due pursuant to the collective-bargaining agreement when contributions to the fringe benefit funds are delinquent; and, if applicable, by reimbursing any of its employees for any medical or other expenditures incurred by them by reason of any discontinued or delinquent payment to such funds.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all records necessary or useful in checking compliance with this Order.

(e) Post at its Inkster, Michigan, places of business copies of the attached notice marked ''Appendix.''[4] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. April 12, 1983

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL--CIO, by unilaterally and without notice to the aforesaid Union failing and refusing to make contributions to certain fringe benefit funds pursuant to the collective-bargaining agreement between the parties.

WE WILL NOT refuse to bargain collectively with the Union by unilaterally and without notice to the Union failing and refusing to pay liquidated damages which are due pursuant to the collective-bargaining agreement when contributions to the fringe benefit funds are delinquent.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement with Millmen's Local 1452, United Brotherhood of Carpenters and Joiners of America, AFL--CIO. The appropriate unit for the purpose of collective-bargaining is:

> All lay-out men, machine set-up employees, machine operators, spray painters, cross-cut employees, rip sawyers, common employees, frame table employees, assemblers, laborers, sanders, and puttiers employed at Respondent's facility at 2638 Princess Avenue, Inkster, Michigan; excluding guards and supervisors as defined in the Act.

WE WILL make whole the unit employees by making contributions to certain fringe benefit funds pursuant to the collective-bargaining agreement between the parties, retroactive to November 16, 1981.

WE WILL make whole the unit employees by paying to certain fringe benefit funds liquidated damages which are due pursuant to the collective-bargaining agreement when contributions to the fringe benefit funds are

delinquent, and, if applicable, by reimbursing any of our employees for any medical or other expenditures incurred by them by reason of any discontinued or delinquent payment to said funds.

RICH-WALL CUSTOM CABINETRY CO., INC.

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226, Telephone 313--226--3244.